

Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 1-4. These sheets, which include Figs. 1-4, replace the original sheets including Figs. 1-4.

Attachment: Two (2) Replacement Sheets

REMARKS/ARGUMENTS

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims comply with 35 U.S.C. § 112 and are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. **If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone Examiner Interview before any further actions on the merits.**

The applicant will now address each of the issues raised in the outstanding Office Action.

Objections

The drawings are objected to because Figures 1-4 are blurry and include handwritten text. The applicant respectfully requests that the Examiner withdraw this objection in view of the replacement drawing sheets filed herewith.

Rejections under 35 U.S.C. § 112

Claims 11-26 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement

requirement. The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

The Examiner contends that the claims contain subject matter which is not described in the specification in such a way as to enable one skilled in the art to make or use the invention. Specifically, the Examiner contends that the application fails to show or disclose what type or kind of the diaphragm is used to generate a measurement beam aligned to the receiver, and that there is no particular example of a diaphragm. (See Paper No. 20080217, page 3.) The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

The meaning of the term "diaphragm" in the context of optics (a transmitter generates radiation received by a receiver) is well understood by those skilled in the art. Specifically, a diaphragm is understood to be used to control (shape) the transmitted beam. According to WEBSTER'S Dictionary, a diaphragm has different meanings. One definition is a device (e.g., a disk) having a fixed or variable opening for regulating (e.g., restricting) the amount of light traversing a lens or optical system. In other words, in the context of radiation and optics, a diaphragm is simply a plate with a hole (aperture) in it.

Furthermore, in the specification and the drawings of the present application, Figure 1 shows an exemplary "diaphragm system" with reference numeral (12). The diaphragm system (12) has two openings shown in Figure 1 with reference numerals 14 and 16. The beam (18) passes through these openings. In the specification, each of the openings (14, 16) is called a "diaphragm".

In addition, Figures 3 and 4 show an exemplary diaphragm system (128) having two apertures (holes, openings) in it, indicated by reference numerals (130, 132). In the specification, each of the openings (130,132) is also called a "diaphragm".

Rejections under 35 U.S.C. § 103

Claims 11-13 and 24-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,257,708 ("the Fukuda patent") in view of U.S. Patent No. 5,485,013 ("the Cummins patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

First, since claims 24-26 have been canceled, this ground of rejection is rendered moot with respect to these claims.

Since independent claims 11, 12 and 13 have been amended to include features from claims 14, 17 and 20 (now canceled), respectively, these claims are not rendered obvious by the Fukuda and Cummins patents for at least this reason.

Further, the Fukuda patent does not use any diaphragm at all. Rather, the Fukuda patent uses a transparent house (32). LEDs (22, 24) are arranged opposite to receivers (26, 28). No diaphragm is involved to shape or limit the beam of radiation. The Cummins patent shows a diaphragm described as "a plate with an aperture". (See the abstract.) (Actually, two plates (30, 32) are shown, each plate having an aperture

(opening).) However, the Cummins patent does not describe how the aperture is arranged in the device. Specifically, the Cummins patent shows only schematically the plates (30, 32) in relation to the light source (10). It is silent as to the concrete support of the light source (10) and the plates (30, 32).

On the other hand, independent claims 11-13, as amended, recite that the diaphragm (e.g., a plate with an aperture) is arranged separate from the carrier which carries the transmitter and the receiver. Such separate arrangement advantageously ***avoids the need to precisely align*** the transmitter and receiver, and advantageously permits the use of less expensive transmitters and receivers.

Claims 11-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0142316 ("the Schenkl publication") in view of the Cummins patent. The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

First, since claims 14, 16, 17, 19, 20, and 22-26 have been canceled, this ground of rejection is rendered moot with respect to these claims.

Further independent claims 11-13, as amended, are not rendered obvious by the Schenkl publication and the Cummins patent because these references, either taken alone or in combination, neither teach, nor suggest ***a diaphragm system arranged separate from the carrier***. Specifically, in the Schenkl publication, the optical elements 12 and 14 are arranged next to translucent

portions or windows 34 and 36, and in the Cummins patent, the light source 10 is apparently arranged touching (and indeed extending through an opening of) plate 30. This difference from the Cummins patent and the combination proposed by the Examiner is even more clear in claims 11 and 13 in which the ***diaphragm system is arranged spaced from the transmitter***. Thus, independent claims 11-13 are not rendered obvious by the Schenkl publication and the Cummins patent. Since claims 15, 18 and 21 depend from claims 11-13, respectively, these claims are similarly not rendered obvious by these references.

Furthermore, 11-13, as amended, are not rendered obvious by the Schenkl publication and the Cummins patent because one skilled in the art would not have been motivated to combine these references as proposed by the Examiner. Specifically, the Cummins patent requires that the gap between two plates and the size of the apertures in the two plates be properly selected in order to control an angle of divergent light emanating from the light source. (See, e.g., the Abstract.) Applying these two plates to the two legs of Schenkl device would likely constrain the degree to which the gap between the two plates could be controlled. Since such a constraint might adversely affect the characteristics of the plates 30,32 in the Cummins patent, one skilled in the art would not have been motivated to combine these references as proposed by the Examiner.

New claims

New claims 27 and 28 depend from claim 13 and are supported, for example, by Figures 1, 3 and 4. This further distinguishes the claimed invention over the cited art.

New claims 29-31 depend from claims 11-13, respectively, and are supported, for example, by Figure 1 and its associated description. This further distinguishes the claimed invention over the cited art.

Conclusion

In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are in condition for allowance. Accordingly, the applicant requests that the Examiner pass this application to issue.

Any arguments made in this amendment pertain **only** to the specific aspects of the invention **claimed**. Any claim amendments or cancellations, and any arguments, are made **without prejudice to, or disclaimer of**, the applicant's right to seek patent protection of any unclaimed (e.g., narrower, broader, different) subject matter, such as by way of a continuation or divisional patent application for example.

Respectfully submitted,

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CERTIFICATE OF MAILING under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited on **May 27, 2008** with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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